

Chapter 3: PROCEDURE INVOLVED IN SUBSEQUENT DEALINGS WITH REGISTERED LAND  
(By University of Southern California)

I. INTRODUCTION:

When property has been registered under the Land Title Law all subsequent dealings with that land are subject to the provisions of the Land Title Law, (1) unless the property is properly withdrawn from the system. The bringing of the land under the act implies an agreement which runs with the land. Formerly, no withdrawal of property from the Torrens System was permitted. In the last election, however, a measure was passed by the people permitting owners to withdraw it from the Torrens System. The procedure for withdrawal will be discussed below. Until withdrawal, the property remains subject to the provisions of the Land Title Law.

The present chapter will be devoted to a discussion of the procedure followed in dealing with Registered land after it has been brought under the Land Title Law. This involves conveyances, creation of various types of voluntary encumbrances such as a mortgage, trust deed, et cetera; creation of various types of involuntary encumbrances such as judgment liens, attachment liens, et cetera.

II. PROCEDURE INVOLVED IN THE CONVEYANCE OF REGISTERED LAND

The procedure described in this section applies to the conveyance of the entire estate in registered land; the conveyance of a part of the land; the conveyance of an undivided interest in the land; lease of registered land for the lessee's life. Any transfer of a lesser interest such as a lease for years and the creation of any encumbrances on registered land will be discussed in the next section.

The first step involved in the conveyance of registered land is the execution of an instrument of conveyance, which is required to be of durable material. (2) The form of this instrument may be the same as would be used if non-registered land were involved. (3) For example, O, the owner of Blackacre, desires to convey his interest to P. O executes any type of deed authorized by law, such as a grant deed or quit claim deed made out to P, the grantee. O must make a notation on the instrument that the land is registered land, the name of the registered owner (O in this case) and the number of the certificate of the last registration of this property. If this notation is omitted the instrument will be refused by the Registrar. (4) The grantee's full name and address must also appear on the deed. (5) If the property conveyed is registered property and consists of community property, the spouse in whose name it is registered may convey it in his name, but written consent of the other spouse must be obtained according to Section 57 of the Land Title Law. If the property transferred is homestead property, both spouses must join in the transfer as provided by Section 56 of the Land Title Law, unless

the homestead has been released or extinguished.

The deed must be properly delivered by the grantor to the grantee. This is an essential step in the conveyance of registered property.(6) Title does not pass, however, on the delivery of the deed as it would when non-registered land is conveyed. Title to registered land does not pass until the instrument is filed and a new certificate issued by the registrar. Until such time the only effect the instrument has is that of a contract to convey.(7) This is one of the essential differences between the ordinary recording system and the registration (Torrens) system.(8)

The next step which must, therefore, be taken is the filing of the instrument of conveyance. P, in the above example, must present the original deed to Blackacre given to him by O, to the Registrar. At the same time he must produce the duplicate certificate that had been issued to O when he acquired the property. This may be accomplished by having O give P the certificate or having O appear at the Registrar's office with P and give the certificate to the Registrar directly. Either method is troublesome since delivering the certificate to P involves the possibility of loss, and an actual appearance at the Registrar's office requires an element of time. In this respect the Torrens System is more cumbersome than the Recording System.(9)

In addition, the grantee (P in this case) must file an affidavit with the Registrar containing the following data:(10)

1. Whether the transferee is married and if so the name of the husband or wife and whether or not the property is community property. This affidavit must be signed by the transferee but it is not necessary for the spouse to sign also if the transferee is married. A recent opinion issued by the Attorney General's office clarified this since it had formerly been the practice of Registrars in California to require both the husband and wife to sign the affidavit.(11) The reason for this practice was to avoid fraud on the part of the spouse who was the transferee. The Attorney General's opinion held that a bona fide purchaser could rely on the state of the title in the certificate and would be protected if the spouse had made fraudulent statements concerning the character of his or her ownership as separate property or community property.

After these materials have been filed by the grantor and grantee in proper form, their duties have ceased. The Registrar then marks as "filed" the instrument, such as a deed, which has been deposited with him and marks the day, hour, minute and year it was received. This is done for all instruments filed with the registrar in the order in which they are received.(12) All instruments which are filed with the Registrar are required to be kept by him in the Registrar's office. They shall not be taken out except by a Subpoena Duces Tecum issued to and served upon the Registrar by a court of record.(13)

The Registrar shall issue certified copies of these instruments that have been filed with him, when demand is made and the proper fees have been paid. He must write across the face of these copies in red ink, "copy," "no rights conveyed thereby." These certified copies are admissible in evidence with the same force and effect as the original instrument.(14)

The grantee under a deed to registered property does not retain the deed, but it is kept by the Registrar. The grantee may, of course, retain a duplicate copy of the deed for his own use.

After marking the deed as "filed" the Registrar issues in duplicate a new certificate of title which certifies the title to be in the grantee (P, in our example above).

He then finds the old certificate of title in his book entitled "Register of Titles." This certificate will be in the name of the grantor (O, in the above example.) On this old certificate and on the duplicate copy of this certificate which has been surrendered by the grantor, the Registrar then makes a notation of the date of the transfer, the name of the transferee, and the volume and page in which the new certificate is registered. He then stamps across the old certificate surrendered and the old certificate in the Register of Titles the word "Canceled", in whole or in part, but retains them.(15) Section 55 of the Land Title Law requires the Registrar, in addition, to write the word "Transferred" and the date of the filing of the Instrument of transfer on the old certificate and surrendered duplicate certificate and sign the endorsement.

The new certificate which is issued contains the same information as is required when the original certificate of title is issued after the initial judicial proceedings required for the bringing of property under the Torrens System. The data required for such certificate may be obtained from Chapter 2 of this paper. Section 58, however, expressly states that the certificate issued in accordance with a subsequent transfer must state whether the property is community property or not. In addition, if the transferee is an executor or administrator Section 58 requires the certificate to name the deceased testator or intestate. If the transferee is an assignee or trustee, the new certificate must contain the name of the insolvent or bankrupt. If the property has been sold for taxes and the last certificate shows such to be the case, the new certificate issued upon transfer of such property must state that the transfer is subject to such sale for taxes. The procedure involved in sale of registered property for taxes is discussed subsequently.

The new certificate and duplicate are endorsed with the volume and page of the register where this new certificate is to be found. This requirement is the same as required when property is initially registered.

The new certificate which is issued is kept by the Registrar in the "Register of Titles" and the duplicate certificate is delivered to the grantee who is the new owner of the property. He must sign a receipt for this as discussed in Chapter 2 in connection with the initial registration

of title. The name of the transferee must be entered in the book required to be kept by the Registrar containing the names of all persons to whom certificates have been issued. The number of his certificate and the day, hour and minute of its issuance must also be entered in this book. An entry must also be made in this book of the name of the person to whom the duplicate was delivered and the book and page where the original is entered or recorded. This book also contains the receipts for delivery of duplicate certificates.

The new registered owner's name must then be indexed alphabetically in the index of persons owning interests in registered property. An entry would also have to be made in the property index. Chapter 2 contains a discussion of these records kept by the Registrar.

The property is deemed "Registered" in the name of the transferee when the new certificate is issued in his name in duplicate and a notation made thereon of the volume and page of the Register in which the original may be found.(16) This is the same method used in registering property when it is brought under the Torrens System for the first time. Registration indicates the passage of title from the old owner to the new owner.

It has been argued that the Registrar in issuing a new certificate upon a subsequent transfer of registered property or in making memorials of encumbrances on existing certificates of title is exercising judicial functions which is a violation of the California Constitution Article III, Section 1 which prohibits one department of the state from exercising functions belonging to another. The basis for such an argument is that the Registrar, an administrative official, must perform a judicial function in determining the legal effect of instruments filed with him, such as leases, deeds, et cetera before he issues the new certificate or enters a memorial of an encumbrance. In the issuance of the first certificate when property is originally brought under the Torrens System no such problem is involved since the certificate is issued by the Registrar under a court order.

The court in the case of Robinson v Kerrigan(17) discussed this constitutional problem and stated that every administrative official is called upon from time to time to exercise some powers which are legal in effect, but which are merely incidental to his administrative functions. Since the Recorder is merely a ministerial officer his decision on legal questions is not final and he may be ordered by a writ of mandamus to act properly. This, the court feels is a sufficient safeguard. The provision involving the duty of the Registrar to issue subsequent certificates has, therefore, been upheld as constitutional. In addition, Section 99 of the Land Title Law provides that the Registrar may petition the court for an opinion on how he should act in regard to any subsequent transaction when he is in doubt. In addition, if the parties disagree as to the way an interest should appear on a certificate they may request a court order giving the proper form to be used.



The case of In re Seick(18) involves the right of the Registrar to ask the court for an order as to the method of entering various encumbrances on the certificate of title. The case, however, stresses the point that an appeal may be taken from the court order as in the case of any court order and the decision of the appellate court may hold that the order given to the Registrar was improper and, therefore, should be changed.

The conclusion is that the Registrar may exercise certain judicial duties on occasion, but there is a sufficient judicial control over the exercise of these duties.

It should be noted that there is an alternative method of transferring registered property. This is as follows: O, the owner of Lot A may endorse on his duplicate certificate of title covering Lot A the following statement:

"I, O, grant to P the real property described in this certificate. Witness ... hand ... and seal ... this ... day of ..., ...."(19)

This endorsement must also contain the full name, residence and post-office address of the grantee as provided in Section 54 of the Land Title Law.

This duplicate certificate of title, properly endorsed and acknowledged is then delivered to the grantee, P. This is sufficient to transfer the property without the issuance of a new certificate. When this method is used the certificate of title in the Registrar's office does not show the true state of title, but the duplicate certificate does. A subsequent purchaser from either O or P after the transfer to P will not be misled since he must acquire this duplicate certificate in order to acquire title and the duplicate will show the true state of the title. This is true whether he takes title by an endorsement on the duplicate certificate or by a surrender of the duplicate certificate to the Registrar and the issuance of a new certificate. This alternative method is advantageous in that it saves additional expense of issuing a new certificate.

Generally, when only a part of the land described in a certificate is transferred, a new certificate is issued to the grantee covering the part transferred to him and a new certificate is issued to the grantor for the part remaining in him. An exception is made when a tract is divided into subdivisions designated by numbers or letters on a plat filed with the Recorder. In such a case, if the owner of the tract conveys a subdivision of this tract, the Registrar may issue a new certificate to the grantee but merely enter a memorandum on the original certificate and the grantor's duplicate, cancelling the certificate as to the subdivision that has been conveyed.(20) This, of course, saves the issuance of a new certificate to the grantor each time he conveys a subdivision, which involves a considerable amount of time and expense. This process may be continued as long as there is room on the original and duplicate certificates for these notations.

Section 109 of the Land Title Law provides that the owner of registered land may subdivide it in the same manner as unregistered land and when this is done new certificates must be issued.

When the owner of a subdivision transfers lots subject to building restrictions, he may furnish the registrar with printed forms of certificates of title to be used by the Registrar and may include the restrictions in the certificates. These forms must be approved by the Registrar, but he has no authority over what restrictions shall be included.

### III. PROCEDURE INVOLVED IN CREATING ENCUMBRANCES ON REGISTERED LAND

The procedure involved in creating encumbrances on registered land is similar to that involved in a conveyance of this land. However, the main difference is that no new certificate is issued in connection with an encumbrance. A memorial of the encumbrance is generally made on the original and duplicate certificates of title applicable to the property involved. The procedure will, however, be discussed below. It is advisable to discuss voluntary and involuntary encumbrances separately due to a few major differences in the procedure for registering these two types of encumbrances.

#### A. PROCEDURE INVOLVED IN CREATING VOLUNTARY ENCUMBRANCES ON REGISTERED LAND

Voluntary encumbrances include mortgages, trust deeds, and various charges against the property. The method of registering such encumbrances is as follows:

The owner of the registered property fills out an instrument such as is used when non-registered property is involved. (e.g. mortgage, trust deed)(21) This must contain the full name, address of the person who claims an interest under the instrument, and a statement that the land is registered land, the name of the registered owner and the number of the certificate of the last registration thereof.(22) This is filed with the Registrar's office together with the duplicate certificate of title to the property. Section 55 provides that when the instrument such as a mortgage is filed the property becomes subject to this mortgage. Until this time the mortgage operates merely as a contract to mortgage the property as between the parties. Actually, in spite of the language of Section 55 stated above, the mortgage does not become a lien until such time as it is actually entered on the Register of titles.

When the instrument is filed the Registrar endorses the date of filing thereon.(23) After making a memorial of this instrument on the original certificate in the Register of Titles, the Registrar makes a notation on the mortgage or other instrument filed, of the volume and page of the Register where the memorial of that document was made.(24) This document (e.g. Mortgage, et cetera) is retained by the Registrar in his files.(25)

When a mortgage, lease or other instrument creating or dealing with a charge upon registered land is in duplicate, triplicate, or more parts, only one part need be filed with the Registrar. The Registrar notes on the original certificate in the Register of Titles whether the mortgage or other instrument was filed in duplicate, triplicate, et cetera. The Registrar also marks on the other copies of the instrument "mortgagee's duplicate", "lessor's duplicate", et cetera, and the date of filing and the volume and page of the Register where the memorial of that document is entered. He then delivers them to the parties entitled thereto.(26) If a sufficient number of copies has not been furnished to the Registrar, the Registrar may make certified copies of the instrument filed in his office with the endorsements thereon and mark them "mortgagee's certified copy," et cetera. He enters on the Register a notation of the issuance of these certified copies. These are then delivered to the persons entitled to them. These certified copies then have the same force and effect as duplicates.(27)

As stated above, the Registrar makes a memorial of the mortgage or other charge filed with him on the original certificate of title in the Register of Titles and also on the owner's duplicate certificate which has been surrendered to the Registrar.

If the instrument transfers the property in trust, upon condition or upon limitation the Registrar must note this fact on the original and duplicate certificates of title. If the trustee is given a power of sale this must be noted on the original and duplicate certificates. If the instrument does not state that he has power of sale, a court order must be given in order to allow him to sell. A certified copy of this order must be filed with the registrar and a memorial of it entered on the certificate of title.(28)

Whenever a memorial is entered on a certificate of title it must be carried forward on all certificates of title until it is cancelled in the proper manner.(29) There is a danger of errors in copying these memorials and references several times. This recopying also involves a considerable amount of time and labor. The result is that the personnel of the Registrar's office must be adequate to meet these demands both in calibre of work and in dependability. A sufficiently large staff is required to attend to the many clerical duties involved. In addition, the parties in interest must check the Register to see that everything has been properly entered on the Register of Titles.(30)

The duplicate certificate must always be produced in order for the Registrar to issue a new one or enter a memorial. An exception is made when an order of court is obtained directing the Registrar to file the instrument without production of the duplicate certificate of title and enter it on the Register. This order is given by the court only when sufficient cause is shown. A memorial of the order of court must be made.(1) Also, if the owner refuses to produce the duplicate certificate a court order may

be obtained ordering him to produce it in court and present it to the Registrar.(2)

After the duplicate certificate has been endorsed by the Registrar with the proper memorials it is returned to the registered owner who retains it as proof of his title. The mortgagee or other encumbrancer receives a duplicate copy of the mortgage or other instrument for proof of his claim against the property.

Before returning the duplicate instruments and certificates, the Registrar must make proper entries in the name and property indexes.

A mortgage or charge on registered property may be assigned or released.(3) It is advisable to discuss the method of performing these functions at this point.

To assign a charge the holder of such charge executes a written assignment thereof. This is filed with the Registrar together with the duplicate or certified copy of the instrument creating the charge. The Registrar then enters a memorial of this assignment on the certificate of title in the Register opposite the charge, a statement of what priority it has, and a reference to that file number noted on the assignment.

The Registrar notes on the instrument filed in his office which created the charge and the duplicate of this instrument presented to him, the volume and page where the memorial of the assignment is entered and the date of entry.(4)

When property is sought to be assigned the above procedure is followed. When property is sought to be released from the effect of a mortgage or other charge the procedure followed is the same as in the transfer of registered property, except that no new certificate is issued. The instrument which created the charge is then stamped "cancelled" by the Registrar. The memorial of the charge on the Register and the duplicate or certified copy of the instrument creating the charge is also stamped "cancelled."(5)

B. PROCEDURE INVOLVED IN CREATING INVOLUNTARY ENCUMBRANCES ON REGISTERED LAND

The procedure involved in creating involuntary liens is similar to that followed in creating voluntary liens. The main difference, however, is that the duplicate certificate need not be presented to the Registrar in order to authorize him to enter a memorial of the lien on the original certificate in the Register of Titles.(6)

The types of involuntary liens that are most often encountered consist of: judgment lien, attachment lien, mechanic's lien, lien for taxes or assessments. These will be discussed briefly at this time.



### 1. JUDGMENT LIEN:

A certified copy of the judgment must be filed with the Registrar by the judgment creditor. It must contain a notation that registered land is affected, the name of the registered owner, and the number of the last certificate of registration. The Registrar must then enter a memorial of that judgment on the original certificate of title covering the property of the judgment debtor on which it is desired to create a judgment lien. Until this memorial is entered, no lien is in existence.(7) This requires a lien claimant to determine whether the property against which he desires to create a judgment lien is registered land. It also requires additional notations on the copy of the judgment. This causes an additional burden for the judgment creditor. Under the ordinary Recording System all he would have to do would be to record the copy of the judgment in the Recorder's office. Immediately, the judgment would become a lien against all property owned by the judgment debtor in that county.(8)

### 2. LIEN OF ATTACHMENT OR EXECUTION:

When a levy of attachment or execution is made on registered land, the officer making the levy is required by Section 92 of the Land Title Law to file a certificate of the fact of levy.(9) In addition, Section 542 of the Code of Civil Procedure states that when real property subject to the Land Title Law is attached a copy of the writ of attachment, together with a description of the Torrens title certificate, a description of the property, and a notice that it is attached shall be filed with the Registrar of titles of the county. It should be noted that this section of the Code of Civil Procedure also requires the instructions to the sheriff to state that the real property to be levied upon either is or is not registered under the Land Title Law. It can be seen clearly in this instance that the Land Title Law creates additional work for all parties concerned.

The Registrar then makes a memorial of this levy of attachment on the original certificate on file in the Register of Titles. At that time the lien of the attachment becomes effective.

### 3. MECHANIC'S LIEN:

When a Mechanic's Lien is sought to be enforced against registered property it is necessary to record a notice of this lien in the County Recorder's Office and also file a Notice of Lien with the Registrar who makes a memorial of it on the original certificate of title to the property involved.(10) This notice of lien must state that the land is Torrens property, the name of the owner, and the number of the certificate of title covering the property. It should be filed within the period allowed for recording such lien.(11) The propriety of requiring this extra step has been discussed by the court in the case of Hammond Lumber Co. v Moore.(12) In this case a materialman had furnished materials for a building to be erected on registered property. He then recorded a notice of his mechanic's lien, but

failed to file it with the Registrar. As a consequence, he was not permitted to enforce a mechanic's lien against the property.

A mechanic's lien is provided for by Article IV, Section 24 of the California Constitution. The method of enforcement of the lien is left to the legislature with only the limitation that the lien claimant is not to be unduly hampered in his exercise of the lien. The court in the Hammond case did not consider the requirement of filing the Notice of Mechanic's Lien with the Registrar as being unduly burdensome. It is merely a supplementary step which is incidental to the general procedure involved in the enforcement of a mechanic's lien. In addition, the court held that the additional notations required to be put on the Notice of Lien were not unreasonably burdensome. This information can readily be obtained from the indexes in the Registrar's office and the original certificate of title.

As a practical matter, however, these requirements do put a mechanic in a difficult position. He must determine at his peril whether the property is registered property or not and act accordingly.

Section 93 of the Land Title Law states that no lien is created until such notice has been filed with the Registrar. The court in the Hammond case indicates by dictum that this part of the statute is unconstitutional, since the California Constitution provides that the lien is created when the materials are furnished. The legislature cannot change the date of creation of the lien, but merely its method of enforcement. Even if this section is unconstitutional, the court holds that it is separable from the rest of Section 93 of the Act requiring registration of such notice before enforcement of the lien. The conclusion is, therefore, that the lien is created when the materials are furnished, but if registered property is involved the lien cannot be enforced until the Notice has been recorded and registered.(13)

#### 4. LIEN FOR TAXES AND ASSESSMENTS:

In general, the procedure followed when this type of lien is involved is similar to the procedure outlined above in connection with other involuntary liens. A special procedure is required, however, when the lien is enforced pursuant to an Ordinance for Public Improvement. When an Ordinance of a city, town, or county is passed to lay out, change or repair streets, drains, et cetera or make any other public improvement, and the expense is to be paid out of assessments made on real estate, the following steps must be taken.

The Clerk of the Board passing the Ordinance must within 5 days after the Ordinance has been passed, file a notice of its passage with the Registrar and a memorial must be noted on the Register.(14)

If the Ordinance is repealed, the officer authorized to collect the assessments must within 5 days after the repeal notify the Registrar in writing. The Registrar will then cancel the memorial.(15)

Two cases, Board of Pension Commissioners v Hurlburt(16) and Rutledge v City of Eureka(17), have passed on the effect of the failure of the officer to give the proper notices to the Registrar. These cases both held that the requirement of filing the special notice was merely directory and failure to file did not affect the existence of the lien against registered property for street improvements. The result would be that a subsequent purchaser or encumbrancer of this property would be subject to this lien although it did not appear on the original or duplicate certificate of title. This, of course, is an instance in which the certificate of title does not show the true state of the title, and therefore, is not conclusive evidence of title. For other instances in which the certificate is not conclusive see Chapter 4.

#### IV. PROCEDURE FOLLOWED WITH RESPECT TO MISCELLANEOUS TRANSACTIONS INVOLVING REGISTERED LAND

##### A. COURT SALES:

When registered property is under the court's jurisdiction due to an insolvency, probate, or equity proceeding, the transfer of such property is made in the manner required by State law. When the court orders a sale, lease, et cetera of such property the decree must order the Registrar to issue a new certificate of title or make a memorial on the existing certificate (whichever the case requires) in accord with the decree.(18)

The executor or other party involved must file a certified copy of this decree with the Registrar together with a deed or instrument executed in accord with that decree and a certified copy of the order confirming the sale of the property if one is required.(19)

The Registrar will then issue a new certificate or make a proper memorial on the existing certificate as required by the court decree. The certificate or memorial is then stated to be "conclusive evidence in favor of all persons thereafter depending thereon."(20)

When registered property is sold by court order to satisfy a judgment, the purchaser under such sale must file a certified copy of the decree of the court ordering such sale, together with a confirmation if required and a certificate of the officer that the terms of the sale have been complied with. The property is then transferred on the register and a new certificate issued to the purchaser.(21)

##### B. PARTITION:

The owner of an undivided interest in registered land may bring an action for partition. He must include as parties in such action all persons that are shown by the Register to have an interest in the property. He must then file a notice of this action with the Registrar who enters a memorial thereof on the Register. If the property is ordered sold by the court a

certified copy of the decree, a certified copy of the confirmation of the sale, and a certificate of the officer making the sale, must be filed with the Registrar. The Registrar then transfers the property on the Register and issues a certificate of title to the purchaser.(22)

If the property is merely allotted to various persons, those persons must file a certified copy of the court order with the Registrar who issues new certificates to those persons.(23)

If the owner of an undivided interest has given a mortgage on this interest and the property is then partitioned, this mortgage will only affect the interest which this party has in the property as set off by the partition. The Registrar must make a notation on the instrument creating the lien on file in his office, stating that the property has been so partitioned. A new certificate is then issued containing a memorial of this lien.(24)

C. SUIT DISMISSED OR JUDGMENT SATISFIED:

When any suit involving registered land is dismissed or any judgment satisfied, the instrument showing the dismissal or satisfaction must be filed with the Registrar by the proper officer or clerk of the court and certified by the person filing the instrument. The Registrar then cancels the memorial of such suit or judgment on the certificate of title and enters a memorial of the dismissal or satisfaction.

The same procedure is followed when an attachment or execution is released or discharged.(25)

D. LIS PENDENS:

A notice of pendency of suit dealing with registered land must be filed with the Registrar and a memorial made on the register. No notice of pendency of action is given until this has been done. This does not apply to attachment proceedings when the officer making the levy files his certificate as discussed above in the section on Attachments.(26)

E. RIGHT OF EMINENT DOMAIN:

The right of eminent domain is not affected by the Land Title Law. When an action has been brought to exercise this right, a certified copy of the judgment must be filed and a memorandum made on the Register. A new certificate is then issued to the person, corporation or other body entitled to the property taken by eminent domain.(27)

F. POWER OF ATTORNEY:

When a person is given a power of attorney to act for another in conveying or dealing with registered land, the instrument giving him such power



must be filed with the Registrar and a memorial entered on the original and duplicate certificates. The agent may on request have a certified copy of the power of attorney endorsed by the Registrar.

Revocation of a power of attorney is made in the same manner.

G. PENDENCY OF APPEAL FROM ACTION UNDER LAND TITLE LAW ON DECREE AFFECTING REGISTERED LAND:

When an appeal is taken from any action under the Land Title Law or decree affecting registered lands the clerk of the court in which the notice of appeal is filed must notify the Registrar who then enters a memorial of this appeal.(28)

H. TERMINATION OF JOINT TENANCY:

When non-registered property is involved and death of a joint tenant occurs, the survivor must obtain a court order terminating the joint tenancy. Probate Code Sections 1170-1173 provide for the procedure to be followed in such case.

When registered property is involved and the joint tenancy is terminated by death Section 98 of the Land Title Law requires the survivor to petition the court for an order terminating the joint tenancy and ordering the Registrar to issue a new certificate in the survivor's name. Notice of the pendency of this must be filed with the Registrar who notes it on the certificate. After notice and hearing the court orders the termination of the joint tenancy if it is proper and orders the Registrar to issue a new certificate to the survivor. The survivor must then file with the Registrar a certified copy of the decree and the duplicate certificate of title (if it is available) and an affidavit as to whether the property is to be held as community property or separate property. The Registrar will then issue a new certificate in accordance with the decree of court, a copy of which has been filed with him.

The same procedure is followed when a life estate or homestead is terminated.(29)

I. TAX SALE OF REGISTERED LAND:

When registered land is sold for delinquent taxes, the procedure is the same as that involved when non-registered land is sold for delinquent taxes. The property is declared sold to the State, held by the State for 5 years, and then sold at a tax sale to the highest bidder, who receives a deed to the property after paying his bid. When Torrens property is involved this purchaser at the tax sale must comply with additional requirements as follows:

1. NOTICE OF PURCHASE:

The purchaser who buys registered property at a tax sale must, within five days after the purchase, file a written notice of such purchase with the Registrar's office. He must file a sufficient number of copies to send to persons who have an interest in the property.

The Registrar then enters a memorial of this purchase on the original certificate of title in his office. He then mails to the persons named in the certificate and memorials, a copy of the notice.(30)

2. TAX DEED:

After the purchaser pays the amount of his bid, a deed to the property is issued to him. This deed must then be presented to the Registrar who makes a memorial of it on the Register. This filing of the deed is an agreement to transfer the title in effect.(1) The purchaser does not actually receive title until the following steps are complied with:

1. The purchaser who holds this tax deed files with the clerk of the Superior Court an application for a decree showing title to this land to be vested in him.(2)

2. After proper notice is given to all interested parties, and a proper hearing is held, a decree is rendered showing the condition of the title and who is the owner of the property.

3. A certified copy of the decree is then filed with the Registrar who issues a certificate in accordance with the terms and conditions of the decree.(3) The Registrar cancels the old certificate in the usual manner.

All these formalities are required before a purchaser can actually acquire title to registered property at a tax sale. These requirements are for the protection of the original owner whose property has been sold for delinquent taxes.

When the property is first declared sold to the State for taxes and before the five year holding by the State, a similar procedure is followed. The tax collector must within five days file a notice that this property has been declared sold to the State. The Registrar then enters a memorial on the Register and mails notices to the interested parties.(4) Section 77 of the Land Title Law states: "Unless such notice is filed as herein provided, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance thereof." The case of In Re Seick(5) declared that the provision for notice within five days is mandatory and if not complied with a new sale to the State would have to be declared and a notice filed within five days from the date of that sale. The five year period during which the State must hold and which is the period for redemption, begins running from the date of the second sale.

If the property after five years' holding by the State is not purchased by a private individual, a deed to the property is given to the State. This deed must then be filed with the Registrar who issues a new certificate of title to the State and cancels the old certificate. It is not necessary in this case to obtain a decree of court as required when the purchaser at the tax sale is a private individual.(6)

If the owner of the property redeems the property during the period of redemption, a certificate of redemption must be filed with the Registrar. The Registrar then cancels the memorial of the sale to the State upon the certificate of title.(7)

V. PROCEDURE INVOLVED IN MAKING ALTERATIONS, CORRECTIONS AND CHANGES IN CERTIFICATE OF TITLE OR INSTRUMENTS FILED WITH THE REGISTRAR

Section 97 of the Land Title Law requires changes in a certificate to be made in the manner provided by Section 98 of the statute. Section 98 requires a petition to the court, notice and a hearing. This is discussed in more detail below.

The grounds for correction, alteration, or cancellation are as follows:

1. An interest appearing on the certificate has terminated or ceased.  
(see discussion of termination of joint tenancy above).
2. New interests have arisen which are not shown on the certificate.
3. The certificate or memorial has been made by mistake.
4. Change of name.
5. Owner registered as married is no longer married.
6. Corporation has been dissolved.
7. Any other reasonable ground.

A person in interest begins the proceedings by a petition to the court. The court then issues an order for a summons to be issued to all persons interested in the property. After service is made on these parties and notice given to the Registrar who makes a notation of the petition on the certificate, a hearing is held. The court then grants an order to the Registrar to make the correction if the court determines it is necessary.

A certified copy of the court order is then filed with the Registrar who makes the correction.

An illustration of the operation of Section 98 of the Land Title Law providing for correction of a certificate is as follows:

Blackacre, which was registered in O's name, was owned by O. A judgment and attachment had been obtained against X by a creditor of X and had been entered on the certificate of title covering Blackacre, by mistake. X was not the owner of Blackacre and the property was not registered in X's name. An action was brought by O to have the memorial of this judgment removed. This is a proper situation in which to bring an action under Section 98 and the court would order the Registrar to remove the memorial of the judgment.(8)

More serious problems are presented, however, when rights of bona fide purchasers are involved. Section 98 states that the court may not impair the rights of a bona fide purchaser even in connection with the correction of a certificate of title. In addition, Section 98 does not permit the court to open the original decree of registration in a proceeding to correct a certificate. It would seem that this section has been overlooked and disregarded by the court in several decisions discussed in connection with the inconclusiveness of the certificate of title.

Section 28 of the Torrens Act provides for a simpler method of a change of name in a certificate. The owner whose name incorrectly was registered or becomes changed, may file an application with the court for a change of name in the certificate. When he proves the requisite facts and produces the duplicate certificate the court orders the new certificate to be issued by the Registrar with the necessary change in name. This may be heard and acted on by the court with or without notice, in its discretion. This method appears to be the sole method of change of name when marriage is involved. If the change of name is for some other reason either the procedure in this Section 28 or the procedure in Section 98 discussed above may be used to acquire the necessary change in the certificate.

When a deed or other instrument is filed with the Registrar, the address of the grantee must be contained in the deed. If the address is changed a written statement of such change, duly acknowledged, must be filed with the Registrar. The Registrar then endorses this change on the deed or other instrument.(9)

When a duplicate certificate is lost or destroyed the owner of registered property may apply to the court for an order directing the Registrar to issue a certified copy of the original certificate. The court grants such order after proper notice and hearing. A certified copy of the order must be filed with the Registrar who then makes a certified copy of the original certificate and notes on the Register the fact of the issuance of this certified copy.(10)

A certified copy may also be issued by the Registrar for use as evidence upon court order. Similar notations are made as described above.(11)



VI. PROCEDURE INVOLVED IN WITHDRAWAL OF PROPERTY FROM THE OPERATION OF THE TORRENS SYSTEM

Prior to November 1950, property could not be withdrawn from the Torrens System. Due to the difficulties connected with registered property a measure (proposition 11) was passed in November 1950 permitting registered owners to withdraw their property. Sections 48.1 to 48.9 were added to the Land Title Law and provide for the following procedure for withdrawal:

The registered owner files with the Registrar of Titles a verified petition for withdrawal stating:

1. The names of the registered owners.
2. The name of the person in whose name the property was originally registered.
3. Description of the property.
4. Number of last certificate of title.
5. Name and address of all persons with an interest in the property as shown on the last certificate.
6. Request that the property be withdrawn and put back under the provisions of the general recording laws.

The duplicate certificate of title must be presented to the Registrar for cancellation. When the above petition is filed this certificate must be filed with it. The Registrar then cancels the original and duplicate certificates and issues a certificate of the cancellation of these certificates and withdrawal of the land.

The Registrar then makes a notation of the fact of issuance of this certificate of withdrawal in the Register of Titles and notes the same in the name and property indexes. He then files a copy of this certificate with the documents that have been filed in connection with the last certificate of title.

The last certificate of title and certificate of withdrawal are then recorded with the County Recorder of the county in which the land lies and are returned to the Registrar to be filed with a notation of the fact and place of recording endorsed on them.

The Recorder then indexes the certificate of withdrawal and the cancelled certificate of title under the name of each person shown on the certificate of title to have an interest in the property and under the name of the last registered owner and the first registered owner.

When these certificates are recorded the property is again subject to the recording acts and all subsequent parties dealing with the property are deemed to have constructive notice of all documents filed previously with the registrar in connection with this property.

Withdrawal does not affect the original determination of title by the court in the initial registration proceedings. All instruments filed with the Registrar in connection with that property are then part of the record chain of title.

If any person has not consented to the withdrawal he shall continue to have any rights against the Insurance fund which he had before withdrawal.

FOOTNOTES TO CHAPTER 3: PROCEDURE INVOLVED IN SUBSEQUENT DEALINGS WITH REGISTERED LAND

1. Land Title Law, Section 44.
2. Ibid, Section 110.
3. Ibid, Sections 48 and 53.
4. Ibid, Sections 47 and 53.
5. Ibid, Section 54.
6. Ibid, Section 48. Fitzsimmons v Raiche, 63 Cal App (2) 398.
7. Land Title Law, Section 55, Section 32.
8. Thompson, Real Property (Perm. Ed.) Vol. 8, Sec. 4415.
9. See 7 California Law Review, p. 75 for further items in connection with the Torrens System that are time consuming.
10. Land Title Law, Section 58.
11. 10 Atty. Genl's Ops. 42.
12. Land Title Law, Section 50.
13. Ibid, Section 48.
14. Ibid, Sections 51 and 52.
15. Ibid, Section 48.
16. Ibid, Section 32.
17. 151 Cal 40. This case declared the 1897 Statute which was the forerunner of the present Land Title Law constitutional. The 1897 Statute was entitled "An Act for the certification of land titles and the simplification of the transfer of real estate," Cal. Stats. 1897, p. 138. This case of Robinson v Kerrigan has subsequently been considered as applicable to the later 1915 statute which is our present Land Title Law in Frances Investment Co. v Superior Court, 189 Cal 107 and also in 10 Atty. Genl's Ops. 42. Both of these cases assumed its applicability without much discussion. The question of constitutionality has never been raised in any detail since the Robinson case. See Chapter 1 of this paper for a more thorough discussion of the constitutionality of the Land Title Law (Torrens Act). See also Powell,

Richard R., "Registration of the Title to Land in the State of New York," (1938), prepared for the New York Law Society Under a Grant From the Carnegie Corporation, Supplement A, p. 89. See 7 California Law Review p. 75 for a consideration of the question of the right of the Recorder to determine the effect of documents deposited with him, which is a constitutional question.

18. 46 Cal App 363.
  19. Land Title Law, Section 53.
  20. Ibid, Section 49.
  21. Ibid, Section 53.
  22. Ibid, Sections 54 and 47.
  23. Ibid, Section 50.
  24. Ibid, Section 60.
  25. Ibid, Section 51.
  26. Ibid, Section 61.
  27. Ibid, Section 62.
  28. Ibid, Sections 67-70.
  29. Ibid, Section 43.
  30. 7 California Law Review, p. 75. See Chapter 1 for a further discussion of the defects in the Torrens System. (Part IV)
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1. Land Title Law, Section 60.
  2. Drexler v Hufnagel, 76 Cal App (2) 606.
  3. Land Title Law, Section 63.
  4. Ibid, Section 63.
  5. Ibid, Section 64.
  6. Ibid, Section 60.
  7. Ibid, Sections 95 and 91.



8. 7 California Law Review 75.
9. Land Title Law, Section 92.
10. Ogden, M. B., Outline of Land Titles (1947), Chapter XX.
11. 7 California Law Review, p. 87, footnote #29.
12. 104 Cal App 528.
13. See 7 California Law Review, p. 75 for a conclusion contra to the Hammond case. This, of course, was written before the court had passed on the constitutionality of this part of the Torrens Statute.
14. Land Title Law, Section 94.
15. Ibid, Section 94.
16. 7 Cal App (2) 568.
17. 195 Cal 404.
18. Land Title Law, Section 72. In 1931, Probate Code Section 1223 requiring the court to include in the decree an order to the Registrar to issue a new certificate when registered property is ordered sold in a probate proceeding. This is the same as required by Land Title Law, Section 72.
19. Land Title Law, Sections 71, 72, 73. Sections 74 and 75 indicate when a confirmation is required.
20. Land Title Law, Sections 74 and 76.
21. Ibid, Section 88.
22. Ibid, Sections 84, 104, 86.
23. Ibid, Section 85.
24. Ibid, Section 87.
25. Ibid, Sections 90 and 96.
26. Ibid, Section 89.
27. Ibid, Section 101.
28. Ibid, Section 107.

29. Title Insurance & Trust Company's Handbook for Title Men (1948)  
p. 145 and 146.
30. Land Title Law, Section 30. Section 56 states that when such notation  
has been made a transfer of the property must state that it is subject  
to the tax sale and the new certificate issued must so state.
  1. Ibid, Section 78.
  2. Ibid, Section 78.
  3. Ibid, Sections 79, 80, 82.
  4. Land Title Law, Section 77.
  5. 46 Cal App 363. Discussed in case note, 8 California Law Review,  
p. 450.
  6. Ibid, Sections 78, 81.
  7. Ibid, Section 83.
  8. Pioneer Abstract Etc. Co. v Feraud, 91 Cal App 278 is a case involving  
facts similar to this illustration although complicated by other factors.
  9. Land Title Law, Section 54.
  10. Ibid, Section 27.
  11. Ibid, Section 27.

Chapter 4: EFFECT OF REGISTRATION OF PROPERTY UNDER TORRENS SYSTEM  
(By University of Southern California)

I. INTRODUCTION

The advocates of the Torrens Registration System claim that it has two primary objectives. These consist of (1) a simplified method of conveyancing of real property and (2) a conclusive determination of title to property. The way in which these two objectives are to be carried out has been discussed in detail in former chapters. The final question of whether either of these two objectives has actually been carried out in practice to any great extent in California remains to be analyzed in this chapter. The question can best be illustrated by the following example:

A is the registered owner of Blackacre, which he desires to sell to P. A executes a deed covering the property, conveying it to P. The deed, together with A's duplicate certificate of title to the property is given to the registrar. The registrar after making appropriate entries, issues a certificate of title to the property to P. Theoretically, P has a title to the property which is subject only to the encumbrances and interests listed on his certificate. These encumbrances and interests in turn would be based on the encumbrances and interests appearing on the original certificate of title which is filed in the registrar's office. P is, theoretically, allowed to rely completely on the state of the title as it appears in this certificate. This eliminates long, tedious title searches and any off-the-record matters such as fraud, non-delivery of a deed in the chain of title, et cetera, which have been noted as serious defects connected with the recording system. The picture as painted in this way is very satisfactory. It provides a method of acquiring perfect title protection similar to the registration system used in connection with the transfer of motor vehicles. In addition, the Torrens System makes provision for an Assurance Fund to protect against loss from the operation of the System. The outward simplicity of the system is very appealing. It appears to answer all the problems that are present in the recording system and furnish insurance against loss.

In actual practice, however, it has been found, particularly in California, that the purchaser does not receive the perfect protection outlined above. In fact, on a closer scrutiny of the Torrens System in California, it is discovered that he is actually subject to many interests which do not appear on the certificate and many of which could be discovered only by a thorough investigation of the original proceedings in which the property was initially brought under the Torrens System. Wherever the purchaser is, in fact, subject to interests not appearing on the certificate, the Torrens System breaks down and fails to achieve its main purpose of providing a conclusive certificate of title.

The purchaser is subject to various interests (not appearing on the certificate) by reason of statutory provisions. These include various short

term leases, tax liens, et cetera, listed in the Land Title Law and discussed below. Other interests not shown on the certificate affect the subsequent purchaser by reason of judicial decisions. These include interests of parties not properly notified in the original proceeding for registration or interests of parties fraudulently omitted from the original proceedings, et cetera.

In addition to these matters, a purchaser must always guard his certificate of title against loss. This is important as is shown by the following illustration:

P, the purchaser of Blackacre, loses his duplicate certificate. X, a thief, finds the certificate, forges P's name to the certificate and transfers it to B, a bona fide purchaser. P has no right against B, since the certificate represents title and B has acquired it in good faith. P is left with recourse against the Assurance Fund, which is at best, merely a monetary substitute for the land which he purchased. The final disillusionment in the California situation, is that the Assurance Fund has been bankrupt, leaving P with a worthless claim. This appears to be rather a severe hardship when the owner had not been careless or negligent in losing his certificate. Of course, in order to maintain the system of a conclusive certificate B must be protected and must receive title to the property. However, it seems that some satisfaction should be allowed P for his loss.

These defects will be discussed in greater detail below under the following headings:

- (1) Interests not appearing on the certificate to which a purchaser is subject by statute.
- (2) Interests not appearing on the certificate due to defects in the initial proceedings for registration.
- (3) Interests not appearing on the certificate which result from defective transfers in the chain of title.
- (4) Events subsequent to purchase of registered land which cause loss of the purchaser's title (e.g. fraud and forgery).

## II. INTERESTS NOT APPEARING ON THE CERTIFICATE TO WHICH A PURCHASER IS SUBJECT BY STATUTE.

Section 34 of the Land Title Law states that a registered owner holds his property subject to such estates, mortgages, liens, charges and interests which are noted in the last certificate of title EXCEPT:

- "1. Any subsisting lease or agreement for a lease for a period not exceeding one year, where there is actual occupation of the land under lease. The term "lease" shall include a verbal letting.



2. All land embraced in the description contained in the certificate which has theretofore been legally dedicated as or declared by a competent court to be a public highway.
3. Any subsisting right of way or other easement, created within one year before issue of the certificate upon, over, or in respect of the land.
4. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.(1)
5. Such right of action or claim as is allowed by this act.
6. Liens, claims, or rights arising under the laws of the United States, which the statutes of California can not require to appear of record upon the register."

Although section 36 of the Land Title Law requires section 34 to be printed on the certificate of title as a memorandum to the holder, it does not require specific data to appear there. This means that a purchaser may be forced to investigate personally to determine whether any short term leases, et cetera exist which would affect his interest in the property but which do not appear on the certificate of title filed with the registrar and which would not, therefore, appear either on the duplicate certificate which his grantor surrendered or the duplicate certificate issued to the purchaser himself.

### III. INTERESTS NOT APPEARING ON THE CERTIFICATE DUE TO DEFECTS IN THE INITIAL PROCEEDINGS FOR REGISTRATION.

The majority of cases arising under this section have been the result of lack of jurisdiction of the court in the original registration proceedings. This may have been caused by failure to serve parties who had interests in the property at the time of the registration proceedings; it may have been caused by the court's lack of jurisdiction over the property which was the subject of the action; or by various other considerations. In cases where there has been such a lack of jurisdiction the courts in California have allowed the decree of registration to be attacked and set aside regardless of the fact that the property had been transferred to a bona fide purchaser and regardless of the provisions in the Land Title Law making the decree of registration and the certificate of title issued thereafter conclusive as to the status of the title.

The following case affords an illustration of the above discussion:

O, owner of Blackacre, brought an action to have his property registered under the Torrens System. He failed to name X, (who was occupying a small section of Blackacre) in the petition and X was not given personal service of the petition and summons. The Land Title Law

requires personal service to be given to all occupants of the property sought to be registered. X, having no knowledge of the registration proceedings failed to appear and consequently the property was decreed to be registered in the name of O, with no mention of X's interest which was based on a boundary agreement previously made with O. Several years later the property was sold to a bona fide purchaser, P, who had no actual notice of X's interest. X brought an action to quiet title and set aside the decree of registration so that he could assert his interest in Blackacre against P. The court in Swartzbaugh v. Sargent(2) under facts similar to those outlined above, held that X was entitled to set aside the decree of registration and assert his interest in the property. The court held that failure to give the notice required by statute in this instance meant that no due process had been given to X.(3) This holding was given in spite of Section 36 of the Land Title Law which states "... no person taking a transfer of registered land,... shall be held to inquire into the circumstances under which, or the consideration for which, such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand, or interest; and the knowledge that any unregistered trust, lien, demand, or interest in existence shall not of itself be imputed as fraud." This decision, of course, violates the principle that the decree and certificate of registration are to be considered conclusive evidence of title and breaks down the operation of the Torrens System to a considerable extent.(4) The result is that the purchaser must check the records prior to the initial registration and investigate the premises to find any outstanding interests of parties who were not properly notified in the initial registration proceedings or run the risk of losing the property which he has purchased, perhaps years later.

When there has been a lack of jurisdiction in the original registration proceedings, there is no limit on the time within which the decree may be set aside. It would seem, however, that a person who deliberately failed to bring such action within a reasonable time after discovery of his rights, might be precluded by laches from asserting his interest.

When the original decree of registration has been rendered and there has been mistake, fraud, or inadvertence connected therewith, the decree may be set aside within a stated period.(5) This, however, would not affect the rights of a subsequent bona fide purchaser of the registered property. His rights would be affected only if there were a lack of jurisdiction in the original registration proceedings.

#### IV. INTERESTS NOT APPEARING ON THE CERTIFICATE WHICH RESULT FROM DEFECTIVE TRANSFERS IN THE CHAIN OF TITLE

In the report on the California Recording System it was shown that defective titles often resulted from flaws appearing in the chain of title. For example, P purchases Blackacre from O, the record owner. The record does not, however, indicate that O acquired Blackacre from the former

owner X, by means of fraud or forgery. P, although a purchaser in good faith would lose the property to X, since no title had passed to O, and thus P had acquired no title. There are various other flaws in the chain of title which affect a purchaser's title under the ordinary recording system, but of which he would have no notice from the record.

The primary purpose of the Torrens System is to eliminate such situations. A bona fide purchaser who relies on a certificate of title covering the property he is purchasing would be protected against a forgery, fraud, failure of consideration, et cetera, in his chain of title. For example: X steals the duplicate certificate of title to O's property, forges O's name to it and to a deed transferring the property to X, and registers the property in his own name. X then transfers the property to P, a bona fide purchaser, relinquishes the certificate of title and a new certificate is issued to P. O on learning of this forgery attempts to recover the property from P. The Torrens System in such a situation protects P, whereas under the recording system O would be protected. The reason for this is that the certificate of title in the registrar's office may be relied on by a purchaser to show the title to the property, at least to this extent.(6)

This illustrates the major difference between the recording and the registration systems in their operation in California. A purchaser will not be subject to defects in the intermediate transfers occurring in the chain of title. To this extent he is protected under the registration system, where no protection would be afforded under the recording system.

V. EVENTS SUBSEQUENT TO PURCHASE OF REGISTERED LAND WHICH CAUSE LOSS OF THE PURCHASER'S TITLE (e.g. fraud and forgery)

The above paragraph stressed the protection granted by the Torrens System to a subsequent purchaser. This section will emphasize the drastic effect such a rule will have on the owner of registered property. For example, O, who has purchased Blackacre, loses his certificate of title to the property. X finds it, forges O's name to a deed and transfers the property to P. According to the above discussion P is given full protection. O, on the other hand, is given little or no protection. His title has been lost and he has no recourse against P to recover the property. An assurance fund is set up by the Land Title Law to permit him to recover money damages, but as discussed in a former chapter that fund is presently bankrupt.(7) His right of action against X, the thief, would be a technical one, since X would probably have departed immediately after the sale of the property to P.

To this extent the Torrens System has created a hardship for owners of registered property. They must guard their certificates with utmost care or run the risk of loss.

The same result would occur in many types of fraud cases, where the owner of registered property would lose his property due to fraudulent actions on the part of his vendee.

A purchaser or owner of registered property is, therefore, subject to a number of interests not appearing on his certificate and must in addition guard his certificate of title carefully in order to protect his rights. This makes the operation of the Torrens System in California far from ideal.

It would seem that some of these problems might be solved by the fact that the original owner is in possession and the subsequent purchaser is not then a bona fide purchaser and should be given no protection. The courts have apparently not explored this possibility to any great extent.

#### VI. EFFECT OF FAILURE TO REGISTER INTERESTS IN TORRENS PROPERTY

This subject should be briefly considered before concluding the discussion of California's Land Title Law.

As shown above, a subsequent purchaser is generally not subject to interests which are unregistered. There are a few situations in which this is not true, as discussed formerly, but for the moment let us omit any consideration of those factors.

The following example will illustrate the effect of failure to register interests in registered land:

O, owner of lot A, mortgages the property to M. Lot A has been registered under the California Torrens System. M, however, fails to see that this mortgage is properly registered and entered as a memorandum in the certificate of title in the registrar's office. O later conveys the property to P, a bona fide purchaser with no notice of the mortgage which had been given to M. The California courts have held that in such a situation the mortgage is valid between the parties thereto (namely, O and M) but that it cannot be enforced against P, a bona fide purchaser.(8) This is, of course, in keeping with the rule that a purchaser merely takes subject to interests appearing on the certificate of title, with few exceptions.

If P were not a bona fide purchaser - that is if he had not paid value, in good faith, and without notice of the mortgage, he would not then be protected under the California decisions.(9) This is, as shown above, in contradiction of Section 36 of the Land Title Law, which apparently would protect even a subsequent purchaser with notice. The courts have not indicated to what extent purchasers will be charged with notice as from possession or suspicious facts and circumstances which would affect their bona fide character. A purchaser should, however, to be safe investigate the character of the premises and determine who is in possession.

#### VII. CONCLUSION

This concludes the analysis of the statutory and case law relating to the California Torrens System. The final chapter which follows summarizes the apparent flaws in this system. (See Part IV, Chapter 1.)



FOOTNOTES to CHAPTER 4: EFFECT OF REGISTRATION OF PROPERTY UNDER THE TORRENS SYSTEM

1. See Board of Pension Commissioners v Hurlburt, 7 Cal App (2) 568; Rutledge v City of Eureka, 195 Cal 404. These cases both provide illustrations of this provision of the Torrens System. 8 California Law Review p. 450 contains a case note which emphasizes the necessity for checking tax records to determine delinquent taxes. See also, Newcomb v City of Newport Beach, 7 Cal (2) 393 regarding land dedicated as a public highway.
2. 30 Cal App (2) 457. The court relies heavily on Follette v Pacific L & P Corp., 189 Cal 193.
3. See Chapter 2 for a discussion of the proper requirements for service of parties with interests in property sought to be registered.
4. For additional cases with similar results see: In re Mercereau, 126 Cal App 590; Newcomb v City of Newport Beach, 7 Cal (2) 393, cited *supra*, footnote #1; Petition of Furness, 62 Cal App 753; Moakley v L.A. Pacific Ry. Co., 99 Cal App 74.
5. For discussion of this refer to Chapter 1 of this paper.
6. Land Title Law, Sections 37 and 38.
7. Gill v Johnson, 21 Cal App (2) 649.
8. Land Title Law, Sections 36 and 29; Carlson v Carlson, 124 Cal App 207.
9. Warden v Wyandotte, 47 Cal App (2) 352; Johnson v Warden, 48 Cal App (2) 329; Fawell v Loop Bldg. Co., 46 Cal App (2) 426.



Chapter 5: OPERATIONS  
(By Division of State Lands)

A. VOLUME AND COSTS

A survey was conducted by the Division of State Lands in 1950 of the operations in each county where there had been any activity related to the registration of titles to real property under the Land Title Law. Of the 21 counties having any record of experience with registration, seventeen were visited in person. The organization in the County Recorder's Office assigned to these activities was studied, and records were obtained as to the volume of work performed and of the costs involved, insofar as the latter were available; also, of the fees collected.

The following table contains pertinent data relating to the seven counties of the State in which over 95% of all land title registrations have been handled:

County	Certificates Issued to 8/1/48	Fees Collected 1949	Instruments Filed 1949	Number In Staff 1949	Salaries Paid 1949
Los Angeles	179,949	\$24,760	25,728	49	\$105,272
San Bernardino	14,637	1,876	3,005	3	9,070
Orange	12,350	1,475	1,902	3	8,890
San Diego	10,034	1,199	1,903	$\frac{3}{4}$	1,692
Santa Barbara	1,200	201	250	0	-7-
Sonoma	1,069	223	266	1	3,108
Santa Cruz	545	136	103	$\frac{1}{2}$	1,664

The wide discrepancy between the amount of fees collected and the portion of the costs of administration represented by "Salaries Paid - 1949" is of importance, indicating that the Land Title System is a substantial expense to the public. The results of a more detailed examination of this feature for Los Angeles County are shown below.

REGISTRATION OPERATIONS IN LOS ANGELES COUNTY  
1941-1951 inclusive

Year	Fees Received	Salaries Paid	Instruments Filed	Income per Instrument	Salary Cost per Instrument
1941	\$12,721.75	\$40,513.90	29,521	\$0.43	\$1.37
1942	12,993.60	39,718.73	20,966	0.62	1.89
1943	11,584.40	39,824.70	15,272	0.76	2.61
1944	15,636.15	43,069.17	18,906	0.83	2.28
1945	18,142.40	47,362.24	21,455	0.85	2.21
1946	23,119.20	56,856.32	26,597	0.87	2.14
1947	27,540.60	71,876.18	31,615	0.87	2.27
1948	24,862.10	88,412.08	29,560	0.84	2.99
1949	24,760.65	108,272.56	25,728	0.96	4.20
1950	43,147.42	147,144.53	40,007	1.08	3.68
1951	40,469.10	159,895.57	33,548	1.21	4.77
11-year Average	\$23,174.31	\$76,631.45	26,652	\$0.87	\$2.88

A similar situation exists in the other counties. San Bernardino County estimates the average cost of processing each document at \$4.15 as against an average fee of \$0.92. The records in Orange County show costs ranging between \$3.50 and \$5.35 per document, with fees averaging between \$0.73 and \$1.46. On the basis of this information it would appear that the fees being charged should be increased threefold to fourfold to put the system on a self-supporting basis.

The following extract from Section 100 of the Land Title Law of California governs the size of the fees required:

"Subdivision 1. For filing decree directing land to be brought under the operation of this act, including original registration and issuing original certificate of title and duplicate and the filing of all instruments connected therewith, for each separate parcel of land affected, one dollar.

"For each subsequent declaration and issuing of certificate of title, including one duplicate and the filing of all instruments connected therewith, for each separate parcel of land affected, one dollar.

"For filing certified copy of any petition filed in the superior court of another county in probate proceedings or any notice of any action in another county wherein registration of land is asked for, one dollar.

"For the entry of each memorial on the register, including the filing of all instruments and papers connected therewith and the indorsement upon the duplicate certificate, for each separate parcel of land affected, fifty cents.

"For filing copy of will with letters testamentary or filing copy of letters of administration with or without will annexed and entering memorial thereof, one dollar.

"For the cancellation of each memorial or charge, appearing on one certificate, twenty-five cents.

"For each certificate showing the condition of the title to all land appearing on one certificate, three dollars.

"For filing any instrument or furnishing a certified copy of any instrument or writing on file not herein specially provided for, the same fees which are allowed by law to recorders for like services."

Fees for similar services in Massachusetts and in Cook County, Illinois, are generally substantially greater. This is apparent in the following tabulation:

COMPARISON OF FEES - REGISTRATION SYSTEM

Operation	California	Illinois: Cook County	Massachusetts
Original Registration	\$1.00	\$19.00 (1)	
Entry of Petition			\$5.00
Entry of Decree			\$10-\$1000 (2)
Entry of Certificate of Title			5.00
Subsequent Certificates	1.00	4.00	2.00
Filing Notices of Action in Another County	1.00	Not Applicable	2.00
Entry of Each Memorial on Register	0.50	4.00	\$1.00-\$3.00
Filing Will or Copy of Letters Testamentary and Entering Memorial Thereof	1.00	4.00	2.00
Cancellation of Each Memorial or Charge on One Certificate	0.25	2.00	1.00
Certificate Showing Condition of Title to All Land on One Certificate	3.00	2.00	2.00
Filing or Furnishing Certified Copy of Any Other Instrument	\$0.10 per folio plus \$0.50	\$0.15 per 100 words plus \$0.50	\$1.00-\$3.00
Assurance Fund Fee	0.10% (3)	0.10% (4)	0.10% (3)

NOTES:

- (1) If value of land exceeds \$1500; if less, \$5.00. Both include examiner's services.
- (2) 0.25% of assessed value; payment to be at least \$10 and not to exceed \$1000.
- (3) Of assessed value at time of registration.
- (4) Of value as ascertained by Registrar.

B. ASSURANCE FUND

Section 100 of the Land Title Law provides for the establishment of a State Assurance Fund, as follows:

"Subdivision 2. In addition to the fees provided in subdivision 1, for services performed by the registrar, there shall be paid to him the following fees: Upon the original registration of any land, a sum equivalent to one-tenth of one per cent of the assessed value of the land including permanent improvements thereon as the same were valued for county taxation the last time said land and permanent improvements or either thereof were assessed for county taxes next preceding the filing of the petition."

After having been in existence for about twenty years there had accumulated in the Assurance Fund approximately \$47,000. By 1936 over 100,000 certificates of title, both original and subsequent, had been issued, and the assessed valuation of the property involved at the time of registration amounted to approximately \$47,000,000. One claim, referred to elsewhere in this report, was decided in 1936 in favor of the claimants by the State courts, and the entire Assurance Fund was wiped out in partial payment thereof (Gill vs. Frances Investment Co.). Since then payments into the fund have practically ceased, and the deficit continues to increase since the court allowed interest at 7% on the unpaid balance. As of June 30, 1952, the total deficit was \$7,921.21.



PART III

RECORDATION IN CALIFORNIA

Chapter 1: INTRODUCTORY MATERIAL - OPERATIVE EFFECT AND LEGISLATIVE HISTORY  
CALIFORNIA RECORDING ACT (By University of Southern California)

I. CALIFORNIA HISTORY

To understand the status of title to real property in California and the effect of the recording act it is necessary to review the early history of land titles in California.

California was taken in the name of the Spanish King in 1542 and partially settled by missionaries in 1769. From 1769 to 1822 (the date of the Mexican Revolution) rights to use the land were given to individuals by the Spanish monarchs, but no ownership was given. These were not grants of title, but merely rights to use the land for grazing and agricultural purposes.(1)

In 1822, the Mexicans revolted against Spain and established an independent Republic. Mexico governed California during this period, encouraging colonization of the area. The Mexican Governors made many grants of land to the settlers in California which were approved by the Mexican Legislature. A formal document evidencing the grant was filed in the government archives. This, however, did not constitute a recording system as we have today. It was merely a method of preserving the original documents evidencing the grants. When the grant was made, monuments were set up to coincide with the boundaries of the area given to the individual by the State.(2)

In the 1830's, American settlers came to California and chaotic conditions resulted. Since there was no system of recording land transfers and since possession was difficult to maintain during this period due to the fighting between the Americans and the Mexicans, it was necessary for the owners or claimants of land to keep the muniments of title in their possession. The culmination of this disorder was the Bear Flag Republic, the Mexican War, and finally the Treaty of Guadalupe Hidalgo in 1848. California became part of the United States with the understanding that Mexican property rights would be upheld if they were valid.(3) Since the Spanish and Mexican grants were in confusion due to the uncertainty that had existed under the Spanish and Mexican monarchs and governors, it was decided that an adjudication of all claims to land should be made. In 1851, Congress passed an act for the Appointment of Land Commissioners to which all private claims had to be submitted.(4) After a determination of title by this Board, appeals could be taken to the District Court and thence to the Supreme Court of the United States. Patents were issued to the claimants who proved their right to the property and these have been held conclusive as to the validity of the Spanish or Mexican grants as to title and boundaries specified.(5)

There have been repeated criticisms of the attitude of Congress in requiring all claims to be adjudicated. Many of the claims were valid and perfect in all respects and actually needed no judicial determination. These claimants, however, were forced to spend as long as thirty years in litigation of their titles, which involved a considerable amount of money. In addition, this litigation cast a cloud of suspicion on all titles to California property, which to

a certain extent exists today in spite of the repeated decisions of the United States Supreme Court that the decisions of the Board were conclusive. However, as a result of these hearings, the title to all land in California became absolute and indefeasible and all questions of the soundness of titles were disposed of at the time California was admitted into the Union.(6)

When California became a State it inherited some principles of law from the Spanish and Mexican law concerning real property, but most of the principles were derived from the English common law. Since there was no requirement of recording land transfers prior to the admission of California into the Union, one of the first acts of the California Legislature was to formulate a recording system and adopt it as part of the California law.(7)

Before discussing this recording act which was adopted in 1850, it is essential to review the common law principles governing the transfer of real property without regard to the effect of a recording statute. The changes which recording make will then be discussed. Finally, the peculiarities found in the California recording system will be discussed in detail.

## II. COMMON LAW PRINCIPLES

The essential problem involved in any discussion of recording is that of priority. That is, as between two successive purchasers, mortgagees, or creditors, of the same piece of land, which claim will be satisfied first.

The common law developed the well-known maxim that "first in time is first in right." That means that if A sells and conveys his property to B, and later attempts to convey to C, B will prevail over C since he is first in time to receive a conveyance. Notice to C of the prior conveyance was immaterial and did not affect the result in any way. This common law maxim is founded on common sense, since once A has disposed of his title to the land, he cannot again transfer it to a second party regardless of the fact that the second party purchased for value and in complete good faith without notice of the former conveyance. If a vendor has no title, he can convey no title, and since A had no title left after his conveyance to B, he could convey no title whatsoever to C.(8)

This rule was followed at common law when there was a question of priority between two claimants of the legal estate or between two claimants of the equitable estate. An example of two legal interests would be two successive conveyances in fee. An example of two equitable interests would be two successive contracts of sale made by the same grantor covering the same property to two separate individuals. The equitable interest acquired under the first contract of sale would give the first vendee priority over the second vendee since the first one was prior in point of time. Of course, this rule is only true where the equities are equal. If the first vendee were guilty of any bad conduct connected with the transaction he would not be given such priority.(9) It should be emphasized again that notice on the part of the second vendee or lack of notice would not change the result in any way.

The common law varies from the rule of first in time in one very important situation. As between a party who acquires a prior equitable interest and one who acquires the full legal title to the property, the common law gave priority to the purchaser of the legal title, provided he purchased the property for value, in good faith and without notice of the prior equity. The basis for such a rule is that the purchaser of the legal title has the "best right" to the property. The court is in effect refusing to deprive the owner of his technically better right of property in such a case because it is not unconscionable for him to retain it.(10) This is the only situation at common law where priority is made to depend on notice rather than time of acquisition of the interest.(11)

### III. THE RECORDING STATUTES - EFFECT ON THE COMMON LAW

The earliest recording act was the Statute of Anne adopted in England in 1708.(12) The only effect this statute had was to require transferees to record in order to maintain their common law priority. That is, if A were first to receive a deed, but failed to record, and the grantor subsequently conveyed to B who recorded his deed, B would be protected by the court as against the claim of A. A, by failing to record his deed, lost his common law priority.(13)

This method of maintaining priority has been used in all of the United States. Of course, the various statutes differ in details. For example, the statute may refer to certain types of instruments only, and may be for the benefit of certain parties only, generally, bona fide purchasers for value without notice of the first conveyance. A general explanation of the effect of recording statutes has been offered by Professor Aigler as follows:(14)

"The effect of the statute really is that the person claiming under the instrument in question by his failure to observe the direction of the Statute confers upon the party who executed the instrument, the moving party, a sort of statutory power to displace the interest vested by the execution of the instrument. This power may be effectively exercised only in favor of those specified in the Statute, usually subsequent purchasers and incumbrancers. The recording ordinarily has no effect so far as the vesting of the intended interest in the transferee is concerned; the interest vests as fully and completely without as with recording. The failure to record simply puts someone into position to divest that interest."

The early English statute of Anne did not provide for the doctrine of constructive notice. It was limited merely to preservation of a common law priority. If at common law a party first in time did not have legal priority, he would not gain anything by recording his instrument. For example, as seen above, a person with a prior contractual equity had no priority at common law as against a subsequent bona fide purchaser of the legal estate. If the holder of the prior equity recorded his instrument it would not give constructive notice to the subsequent purchaser. He would still take free of the prior equity unless he had actual notice of its existence.

The American statutes have departed from the English interpretation and provide that recording an instrument operates to give constructive notice of its contents to subsequent purchasers. The result in the above example would be that the subsequent purchaser of the legal estate would be charged with constructive notice of the outstanding equity since it had been recorded prior to his acquisition of title. He could, therefore, not claim to be a bona fide purchaser without notice, since the record gave him notice whether he actually read the record or not.(15)

To summarize this discussion, the purpose of the recording acts in the United States is twofold:

1. Recording operates to maintain a common law priority and the failure to record results in loss of this priority as against certain designated persons.
2. Recording operates to give constructive notice from the record to subsequent purchasers, thus preventing them from claiming to be bona fide purchasers.

As seen above, the constructive notice phase is peculiar to the United States and is limited only to specific situations in which notice as such will be the determining factor. In most situations, it is unnecessary to discuss constructive notice, since the question is merely one of recording to maintain a common law priority. However, the courts in most instances have failed to recognize this distinction and decide most cases on the question of whether the subsequent purchaser had actual notice or constructive notice from the record preventing him from being a bona fide purchaser.(16) These cases could be disposed of simply by showing that the first purchaser had a common law priority and this was maintained by recording. The second purchaser can claim no rights as against the first purchaser and whether he had notice or not is immaterial.

#### IV. OPERATIVE EFFECT OF THE CALIFORNIA RECORDING ACT

The California recording statute applicable to transfers of interests in real property provides for both the maintenance of the common law priority and for the doctrine of constructive notice.

Civil Code Section 1213 is the provision covering constructive notice and makes explicit the time the notice begins to run and to whom an instrument properly recorded is notice.

"Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees;..."

Civil Code Section 1214 provides for the effect of failure to record. That is, the priority which was granted by the common law to the party first



in time may be lost by failure to record. It is important to determine from the statute who can assert the invalidity of this prior unrecorded conveyance. Civil Code Section 1214 states "Every conveyance of real property,..., is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded,..." This requirement that the second conveyance be recorded makes the California statute different from statutes in force in the majority of states.(17) It puts a burden on the subsequent purchaser to prove not only his good faith, payment of a consideration, and lack of notice, but also that he recorded his instrument in the proper manner.

It should be pointed out that failure to record does not affect the validity of instruments as between the parties or against parties with notice. Civil Code Section 1217 has codified this doctrine as follows:

"An unrecorded instrument is valid as between the parties thereto and those who have notice thereof."

These provisions of the code apply to certain instruments only. Civil Code Section 1215 defines the types of instruments as follows:

"The term 'conveyance,' as used in sections twelve hundred and thirteen and twelve hundred and fourteen, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills."

In addition to these statutes applying to "conveyances," there are various statutes throughout the codes providing for recordation of other instruments which are not strictly "conveyances," but which do affect an interest in real property. These include abstracts of judgment, attachments, executions, notices of non-responsibility, notices of completion, mechanics' liens, and other instruments. Although these are not instruments as defined by Civil Code Section 1215, in most instances recording of them provides constructive notice either as a result of a specific statute or by court decision. For the purposes of this paper, the discussion will involve the general recording statute relating to "conveyances" of real property, but where it is necessary for a complete understanding of the recording system as it exists today, reference will be made to the statutes relating to the specific liens and documents not included under the term "conveyance."

#### V. DEFECTS IN THE CALIFORNIA RECORDING SYSTEM

Theoretically, the purpose of the requirement that instruments be recorded, is that an intending purchaser of land may examine the record and discover what encumbrances are outstanding and whether his grantor had a clear title to transfer to him. Since he has this means of acquiring knowledge, he is treated as if he had read the records and is charged with notice of what appears on the record.

In actual practice, however, it will be seen that it is virtually impossible to trace the complete chain of title from the record books. The methods of keeping records, indexing, and searching are outmoded and insufficient to meet the needs of a large community where there are so many and such rapid transfers of land.

In addition, there are many matters which affect the chain of title, but which are not deducible from a search of the public records. These include adverse possession, forgery, certain types of fraud, incapacity, infancy, and countless other defects which do not appear on the record, but affect the title to the property.(18)

These defects then consist of deficiencies in the method of keeping records, internal defects, and matters off the record which constitute external defects. Both types of defects will be discussed in more detail since they constitute the basis for the criticism of the California system.

#### A. INTERNAL DEFECTS

The recording system in use in California is the grantor-grantee system. The Government Code provides for the details of its administration--types of books to be kept, duties of the recorder in indexing and copying the instruments, the manner in which instruments are recorded, and types of instruments permitted to be recorded or required to be recorded.(19)

The actual recording procedure is carried on in the following manner:

1. The instrument is filed with the County Recorder's office of the county within which the real property affected thereby is situated.(20)
2. The Recorder is then required by Government Code Section 27320 to endorse on the instrument the filing number in the order in which it is deposited, the year, month, day and hour and minute of its reception, and the amount of fees for recording.
3. Government Code Section 27322 requires the Recorder to copy the instrument in handwriting, by typewriting, or photography or other reproduction process into the proper book of records. The Government Code lists the books which must be kept for the various instruments and requires separate books for different classes of instruments. For example, a book of deeds, a book of mechanics' liens, attachments, judgments, etc.

However, in lieu of these separate books, the code allows the Recorder to record any or all of these instruments in one general series of books called "official records." In actual practice, the County Recorder in most counties of California uses just the one series of "official records."(21)

4. When the instrument is copied into the record, the Recorder is required to note at the foot of the record the filing number, the exact time of its reception, and the name of the person at whose request it is recorded, together with a notation that it has been compared.(22)
5. The instrument must then be endorsed with the time and book and page in which it is recorded and delivered to the party leaving it for record or upon his order.(23)
6. The final duty of the Recorder in the recording process is to index the instrument. Part III, Chapter 6, Article 2 of the Government Code contains a list of the type of indices required to be kept and what data is required to be recorded in the index. The code provides that separate indices should be kept for each class of instrument. For example, index of grantors, index of grantees, index of mortgagors, index of mortgagees, index of mechanics' liens, index of pendency of actions, etc.

However, Government Code Section 27257 and Section 27260 provide that in lieu of these separate indices, the County Recorder may keep two indices only, "General Index of Grantors" and "General Index of Grantees." The majority of Recorders' offices maintain only these two types of indexes.

It is important to notice what information is put in the indices by the Recorder. The title of the instrument is first stated, followed by the date of filing, the name of the grantor, the name of the grantee, the volume, book and page where the instrument was copied. The list is kept in alphabetical order under the names of the grantors in the grantor's index and under the name of the grantees in the grantee's index.(24) There is absolutely no mention of the legal description of the property which is affected by the instrument so that it makes it necessary to go to the instrument itself or the record thereof in the record books to find out what property is involved. As will be shown later, this makes it very inconvenient for a person searching the title to a particular piece of property.

When the instrument is properly recorded it will operate as notice to subsequent purchasers as of the day the instrument was deposited with the Recorder for record.(25) The problem which is then presented is how this subsequent purchaser can find this recorded instrument. The method of search which is followed with a grantor-grantee system is as follows:

The purchaser checks the grantee indices to find a reference to the instrument by which his vendor acquired title; then he checks the grantee indices under the name of the party from whom his vendor acquired title, and in similar manner back to the original source of title, which is generally a patent from the United States government. The purchaser must then check the grantor index to find any conveyances, mortgages, liens, or other instruments

which have been created by any of the grantors in the chain of title. This must be done for each grantor to discover any instruments recorded subsequent to acquisition of ownership, which may affect the land the purchaser is interested in. It is not necessary to check for conveyances made before title was acquired by any party. The purchaser must check, however, for instruments recorded after a grantor parted with title which may have been recorded before a subsequent purchaser from the grantee acquired title.(25) This situation will be dealt with in detail in a later chapter, but requires a search of all deeds made by all grantors in the chain of title down to the date of purchase by the individual searching the records.

The index contains only an alphabetical list of the grantors and grantees. It does not contain any statement of the legal description. This means that a purchaser will have to go to the books in which the deeds are recorded and read through almost every deed made by a grantor in the chain of title to see if there is anything in it which affects the property which he is interested in purchasing. Such requirement makes it impossible for an individual to search the records where the grantors in the chain of title have made hundreds of conveyances. It would take an extremely long time just to collect the instruments which are recorded and determine which affect the land the purchaser is interested in buying. If, however, he fails to make such a search he is still treated as if he had read and interpreted every document involving this land. Such a system is primitive and makes it impossible for a purchaser to find out the state of the record title.

The system of recording and searching used in California can be better understood by an illustration:

X desires to purchase Blackacre from Jones, who claims to be the owner of the property. In order to determine the state of the title he is about to purchase, X must check the records to discover any encumbrances outstanding and to determine whether Jones had received title to the property. He must then determine whether Jones conveyed prior to the time X purchases and records his instrument.

X first takes the index of grantees in which the names of all grantees are alphabetically arranged. He traces down this list until he finds the name, Jones, as the grantee of Brown. The index shows that on a certain date Jones took a deed from Brown and that it was recorded on page 5 of book 30. This index, however, does not give a legal description of the property which Brown conveyed to Jones. X must, therefore, go to page 5 of book 30 and read the deed. It may be the deed by which Jones acquired Blackacre, but it may be a deed by which Jones acquired Whiteacre or any other piece of property. If Jones had purchased a considerable number of lots from time to time it would be necessary to read all the deeds on the record by which Jones acquired property in order to determine which one transferred title to Blackacre. Of course, Jones may have a copy of his deed with the



book and page endorsed on it and this would save some of the work in searching.

After X has found the deed from Brown to Jones and assuming that it covers Blackacre he abstracts it. He then must find the instrument by which Brown acquired title. This means he must search the alphabetical index of grantees until he finds Brown's name as grantee. Again he may find that Brown had purchased several lots at different times and he must take out the books in which all deeds to these lots were recorded, until he comes to the one by which Brown acquired Blackacre.

The next task is to find the instrument by which Brown's vendor acquired title to Blackacre. This requires the same search under his name. This must be continued for all the vendors in the chain of title back to the original government patent.

The next step is to check for any encumbrances or conveyances which any of the parties in the chain of title may have made from the time of acquisition of ownership by each party down to the date X's instrument is recorded.

This means that X must check the grantor index for Jones' name and read every instrument that Jones executed for that period of time. This is necessary since the index does not give a description of the property involved. There is no way of discovering whether a particular mortgage referred to the piece of property X is interested in buying except to look at the record of the mortgage.

X then must do the same thing for Brown and Brown's vendor and back to the original source of title.

This is, of course, only part of the task, since, the records of some encumbrances are kept in other offices besides the County Recorder's office. This requires searching in several places. (27)

From this example, it can easily be seen that the method of keeping records and searching is impossible. A title cannot be efficiently searched and even after search there is no guarantee that all outstanding encumbrances have been discovered since some office may have been overlooked.

In actual practice, the purchaser is usually able to obtain an old Certificate of Title, Guarantee of Title or Policy of Title Insurance, which he can use as a starting point. This will avoid the necessity of checking everything back to the beginning. It will only be necessary to bring this certificate down to date. That such a technique is necessary shows the glaring inefficiency of the recording system as it exists today.

Some of the additional offices in which the search must be continued include:



1. County Clerk's Office - search for actions which affect title to property or capacity of parties to execute valid instruments.
2. Probate indices - search for incompetency proceedings or probate proceedings.
3. County Tax Collector's Office and Assessor's Office - search for taxes, bonds and assessments.
4. Bureau of Assessment of the city - search for assessments and bonds.
5. Bankruptcy indices - search for adjudication of bankruptcy.

These are illustrative of the types of things which must be investigated but there are many others. It is bewildering to a purchaser who wants to find out the state of the record title to discover just where to look and what to look for to determine what outstanding encumbrances there are in existence.

When this material is finally assembled it is necessary to interpret what the documents mean and really requires the services of an attorney. The result is that a purchaser would be taking a very great risk in relying on any search that he himself had made, because he probably cannot obtain all the information without assistance, and because he does not have the ability to analyze the instruments properly and evaluate them.

#### B. EXTERNAL DEFECTS

The effect of the recording system is to give a purchaser the means of investigating the state of the record title. This may in some instances be very different from the actual state of the title. The title may be subjected to various equities in parties which do not appear of record. For example, there may be a right to reform an instrument on grounds of mistake, or a right to rescind for fraud or mistake. Numerous equities which cannot be discovered by any method of search may later be asserted by grantors or grantees in the chain of title and may cause a purchaser to take a very defective title. In some instances, the actual title may not even be in the record owner. Under the law of adverse possession, title may be acquired by someone in possession and it is never put on the record. A purchaser is then required to investigate the premises and decide for himself whether or not anyone has been occupying the property for a sufficient length of time to acquire a title by adverse possession. Sometimes this may be a very difficult determination to make for a purchaser especially where property is being purchased by investors in the East who are not able to make a personal survey of every parcel of land purchased.

The recording system was never intended to show a purchaser anything more than the state of the record title. It never purported to indicate defects which did not appear on the record, and never protected a purchaser against such defects. There has been a common belief that a record title gives a complete verification of the title which a purchaser receives. This is not true

since no title can be deduced completely from an examination of the public records. The ownership of land depends not only upon facts of record, but also upon a large body of extraneous facts not present on the public records.(28)

A list of some of the risks outside the record which affect the record follows. This is not intended to be a complete list. Some risks mentioned would depend upon ability to prove certain factors such as good faith, payment of consideration, lack of notice, and other matters.

1. Adverse possession.
2. Rights obtained by prescription.
3. Fraud in the inception of documents.
4. False personation.
5. Forgeries.
6. Marital status of parties.
7. Problems of descent and heirship.
8. Capacity - age and mentality.
9. Errors in recording.
10. Errors in descriptions in the instruments.
11. Special liens - mechanics' liens.
12. Non-delivery of deeds.
13. Void judgments and decrees, due to no jurisdiction, lack of service, or defective proceedings.
14. Authority of agent or corporate officer.
15. Validity of judicial procedure under foreclosure suits.
16. Violation of usury laws.

In some cases, a bona fide purchaser who takes the legal title will not be subjected to equities in other parties. For example, a right to rescind for fraud unless it is fraud in the execution of the instrument, may not be asserted against a bona fide purchaser. This cuts down the effect of the off the record risks to a certain extent, but it is still not sufficient to answer the problem. The doctrine that a purchaser may take a clear title if he takes through a bona fide purchaser regardless of whether he has notice of defects in the title is another safeguard. Again, this has only a limited effect and does not do away with the defects in the recording system.(29)

When the defects are analyzed it seems inconceivable that a purchaser could ever feel secure that his title is clear. He has serious difficulty in discovering the existence of the encumbrances, is unable to interpret them properly, and is then possibly subjected to defects which are off the record and cannot be discovered by any method of search.

It is the recognition of these problems which face a purchaser of real property, that has caused consistent criticism of the recording system as archaic, primitive, and unable to achieve the purpose for which it was originally adopted. It is because of these problems that attempts have been made to remodel the method of recording by use of a plat system or by consolidation of the various offices in which encumbrances may be found.

Finally, it is the realization that a recording system as operated in California is unsatisfactory that led to the adoption of the Torrens System in the 1890's.(30) Just how far that system is able to avoid these difficulties will be discussed subsequently.

#### VI. LEGISLATIVE HISTORY OF THE RECORDING ACT - CALIFORNIA

The provisions of the recording act as it exists today in the codes had their origin in an 1850 statute entitled "An Act concerning Conveyances," passed by the California Legislature April 16, 1850(1). Discussion of the legislative history from 1850 to the present will be divided into two sections: 1850 to 1872 (the date of the adoption of the codes) and 1872 to present.

##### A. 1850 to 1872

The provisions in the 1850 statute which related to recording of instruments affecting real property were chiefly contained in Sections 24, 25, 26 with some minor sections relating to definitions, powers of attorney and discharges of mortgages.

These sections provided as follows:

Section 24: "Every conveyance whereby any real estate is conveyed, or may be affected, proved, or acknowledged, and certified in the manner prescribed in this Act, to operate as notice to third persons, shall be recorded in the office of the Recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record."

Section 25: "Every such conveyance, certified and recorded in the manner prescribed in this Act, shall, from the time of filing the same with the Recorder for record, impart notice to all persons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed to purchase with notice."

Section 26: "Every conveyance of real estate within this State, hereafter made, which shall not be recorded as provided in this Act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded."

Section 36 defined the term "conveyance" as including "every instrument in writing by which any real estate or interest in real estate is created, aliened, mortgaged, or assigned, except wills, leases for a term not exceeding one year, executory contracts for the sale or purchase of lands, and powers of attorney."

The first amendment to this statute, occurring in 1855, changed Sections 24 and 25 allowing the recording of an agreement to convey real property. The amendment provided that such agreement when recorded would operate as constructive notice to third persons.(2) Prior to this, the statute gave no authority to record executory agreements to convey.(3)

In 1860, an amendment to the 1850 statute provided that instruments recorded prior to that date would constitute constructive notice notwithstanding defects in acknowledgment.(4) The reason for such a statute was that the courts had previously held that the record of a defectively acknowledged instrument was void and did not impart notice to anyone. Curative acts similar to the 1860 statute have been passed from time to time and at present Civil Code Section 1207 contains such a provision.(5)

Section 25 of the act was amended in 1864 to provide for the recording of patents to land, duly executed and verified according to law. When properly recorded, the record would constitute notice to subsequent persons.(6)

In 1866, Section 25 was again amended to clarify what persons are charged with notice from the record. As noted above the 1850 statute provided that "subsequent purchasers, mortgagees, and lien holders shall be deemed to purchase and take with notice." When instruments have been properly recorded this effect occurs, but not otherwise. The 1866 amendment added a provision that the records would not be notice to a purchaser at a foreclosure sale if notice of the pending of the action had been properly filed unless an instrument had been recorded prior to the commencement of the action in which the decree and order of sale were entered.(7)

#### B. 1872 to present

The 1850 statute concerning conveyances was completely superseded by the codes, but the code commissioners incorporated the basic recording provisions of that statute into the 1872 code with very few changes.(8) The provisions of Sections 24, 25 and 26 of the early statute are now found in Civil Code Sections 1213, 1214, 1215, 1217.

##### 1. CIVIL CODE SECTION 1213:

This code section as adopted in 1872 included the constructive notice provisions of Section 24 and 25 of the 1850 act. The only change that was made was a clarification of what persons would be charged with notice of the record. The statute before the code was ambiguous since it stated a conveyance properly recorded imparts notice to all persons of the contents thereof. The statute then modified this by declaring that "all subsequent purchasers and mortgagees shall be deemed to purchase with notice." The court before 1872 had resolved this ambiguity by holding that the notice was limited to subsequent purchasers and mortgagees. It did not apply to all persons in spite of the language of the statute.(9)



Civil Code Section 1213 was amended in 1897 and again in 1912 to provide for recording of certified copies of instruments that have already been recorded.(10) Civil Code Section 1218 was adopted in 1905 and amended in 1913(11) covering recording of certified copies to amplify the addition to Section 1213. With the exception of these slight changes, Section 1213 is in the same condition at the present time that it was in when adopted by the legislature in 1872, and only slightly changed from the original statute of 1850.

## 2. CIVIL CODE SECTION 1214:

This code section as adopted in 1872 combined Sections 24, 26 and 36 of the 1850 statute. It provided that "Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded."

Prior to the code there had been a problem as to what parties could assert the invalidity of an unrecorded instrument. This was caused by the fact that Section 24 of the Conveyances Act stated that it was necessary to record in order to give notice to third parties. The implication from that would be that an unrecorded deed would not be notice and could not be asserted against any third party. However, an exception was expressly made that the deed was valid between the parties. In addition, Section 26 of the 1850 statute provided expressly that an unrecorded deed was void against a subsequent purchaser, in good faith and for a valuable consideration where his own conveyance was first duly recorded. In the case of Hunter v Watson(12) it was held that Section 26 was intended to modify Section 24 and therefore the invalidity of an unrecorded instrument could only be asserted by a subsequent bona fide purchaser who first records.

When the code was adopted, the position taken in Hunter v Watson was followed and Civil Code Section 1214 expressly states that the instrument is void as against a subsequent purchaser or mortgagee in good faith and for a valuable consideration, whose conveyance is first duly recorded.

It should be noted, of course, that the code added "mortgagees" to the persons who could assert the invalidity of an unrecorded instrument.

Civil Code Section 1214 was amended in 1895 to provide that an instrument would also be invalid against any judgment affecting the title unless it was duly recorded prior to the record of notice of action. This provision is similar to the 1866 amendment to Section 25 of the 1850 statute, but it is more inclusive since it is not limited to foreclosure decrees as the 1866 amendment was.(13)

No other changes have been made in Civil Code Section 1214 and it stands today virtually as it did in 1872 with the one exception mentioned above.



### 3. CIVIL CODE SECTION 1215:

This section provides for the types of instruments that may be recorded under Sections 1213 and 1214 and is based on Section 36 of the 1850 statute.

The early statute provided that the term "conveyance" included every instrument in writing by which any real estate or interest in real estate is created, aliened, mortgaged, or assigned, with certain exceptions.

Section 1215 of the Civil Code adopted in 1872 and which has not been amended since that time contains practically the identical language. It is in the exceptions that the statutes differ. In the 1850 statute the exceptions were "wills, leases for a term not exceeding one year, executory contracts for the sale or purchase of lands, and powers of attorney." The code makes only the exception of "wills."

### 4. CIVIL CODE SECTION 1217:

This statute adopted in 1872 and never amended states that an instrument is valid as between the parties thereto and those who have notice thereof. It is based on the provision in Section 24 of the 1850 statute that an unrecorded conveyance is valid and binding between the parties thereto.

No provision was contained in the 1850 statute for purchasers who had actual notice of an unrecorded conveyance. It was left to court decision to determine whether such an instrument would be void against a purchaser with actual notice. Mr. Justice Baldwin in the case of Hunter v Watson reviewed the authorities in other jurisdictions and concluded that the intent of the legislature was that only bona fide purchasers would be protected by the statute. He stated that one who had actual notice was not a bona fide purchaser and could not assert the invalidity of an unrecorded deed.(14)

Other types of notice were recognized before the code and these prevented a purchaser from claiming as a bona fide purchaser. These included notice from adverse possession and notice from facts and circumstances which would lead a reasonable man to make an inquiry.

In 1872, the code commissioners included the statement that the unrecorded instrument was valid against those with notice. This codified the view expressed in Hunter v Watson. The problem of what notice consists of is still left to the courts, however. Actual notice, notice from possession and notice from certain facts and circumstances will prevent a purchaser from asserting the invalidity of an unrecorded instrument.

### C. MISCELLANEOUS PROVISIONS IN THE CIVIL CODE RELATING TO RECORDING

#### 1. MODE OF RECORDING

Sections 1169 to 1172 inclusive of the Civil Code cover in a very general manner the place where instruments are required to be recorded, the types of

books used by the Recorder, and the date when an instrument is deemed to be recorded. The details on the duties of the County Recorder were originally listed in the Political Code, but in the 1949 session of the California Legislature these provisions were transferred to the Government Code. (15)

Civil Code Sections 1169 to 1172 were enacted in 1872 and have not been amended. Sections 1169 and 1171 were based on the New York Civil Code. Section 1170 was based on "An Act establishing Recorders' Offices, and defining the Duties of the Recorder and County Auditor," passed April 4, 1850. (16) This provision deals with the time when an instrument is deemed to be recorded and must be construed with Code Section 1213 discussed above.

## 2. ASSIGNMENTS FOR BENEFIT OF CREDITORS

Civil Code Sections 3458-3466 prescribe the recording requirements when property is transferred for benefit of creditors. These provisions were originally based on the New York Civil Code and enacted in California in 1872.

## 3. DECLARATIONS OF HOMESTEAD

Recording is required for a valid declaration of homestead and this is covered by Civil Code Sections 1242, 1262, 1264, 1268, 1269. These statutes were put in the code in 1872 and were originally based on various early statutes on homestead property. (17)

For the purposes of this paper the history of homestead provisions is not pertinent, except for the requirement of recording for the validity of a homestead.

## 4. MORTGAGES

The provisions on recording mortgages of real property and discharges of mortgages are contained in Civil Code Sections 2934 to 2953. These sections were mainly based on the New York Civil Code and enacted in California in 1872. Of course, the 1850 statute concerning conveyances was applicable to mortgages and therefore the Civil Code sections can be said to be based partly on the 1850 statute. (18)

Civil Code Section 2939<sup>1</sup> was added to the code in 1895, providing for a special procedure for foreign executors, administrators, and guardians to satisfy mortgages on the county records.

For the purposes of this paper "conveyances" will generally be considered as including mortgages and, therefore, the basic rules regarding recording apply to them. It will not be necessary to discuss recording of mortgages separately unless required for clarity.

## 5. POWERS OF ATTORNEY

Although the 1850 statute expressly stated the term "conveyance" did not include powers of attorney, Section 27 of that act provided for recording of

powers of attorney to convey real estate. This has been carried over to a certain extent in the codes. Government Code Section 27322 permits powers of attorney to convey real property to be recorded and the exception made in the 1850 statute is not contained in the Civil Code definition of "conveyance."

Section 28 of the 1850 statute required revocation of recorded powers of attorney to be recorded also. This provision has been incorporated into Civil Code Section 1216 and remains there in the same form today.

An express provision covering powers of attorney to execute mortgages is contained in Civil Code Section 2933. This provides for recording in like manner as a power of attorney for a grant of real property. This section was enacted in 1872 but not based on any specific provision of the 1850 statute on conveyances. The Code Commissioners probably thought it would be better to make special provisions covering mortgages, although the term includes mortgages as discussed above. This is in keeping with the option given to the recorder to keep separate books for mortgages and deeds.(19)

## 6. MISCELLANEOUS

There are other provisions in the Civil Code and Code of Civil Procedure involving recording of various types of liens, such as Mechanics' liens, Judgment liens, Attachments, Lis Pendens, etc. These are based on statutes enacted in the 1850's. For the purpose of this study, however, it is advisable to limit the legislative history and detailed analysis of cases and statutes to the basic recording provisions covering real property and to give only slight mention to these specific liens covered by the codes.

### D. GOVERNMENT CODE PROVISIONS INVOLVING DUTIES OF THE COUNTY RECORDER

Title III, Chapter 6, Articles 1, 2, 3, 4, 5 of the Government Code now consolidates the provisions on the Duties of the Recorder. It describes his duties in general, the books which he must keep for indexing and recording, the documents which he must record, the manner of recordation, and the fees which he must charge. These sections were formerly in the Political Code Sections 4130-4142.

The majority of the Government Code Sections regarding the duties and the types of books which the recorder is required to keep were originally based on the 1850 statute establishing Recorders' Offices. The sections involving the manner of recordation and the punishment for neglect of duty are also based on the 1850 statute mentioned above.(20) Some of the statutes were added later, however. For example, Government Code Section 27327, providing for notice when instruments are incorrectly recorded, but properly indexed was added in 1909.(21) Filing of liens for internal revenue taxes is another statute added at a later date.(22) For the most part the provisions have been preserved in practically the same condition they were in when adopted by the code commissioners in 1872 and very similar to the original statutes of the 1850's on which they are based.

The sections involving what instruments may be recorded were formerly in the Civil Code as discussed above. Some of these provisions have been amended recently to provide for additional types of instruments which may be recorded. Government Code Sections 27280 to 27294 now contain the list of types of instruments which may be recorded. Section 27322 lists instruments which the recorder must accept for recordation.

It will not be necessary to go into more detail as to the various amendments to these sections which have been passed from time to time. It is sufficient to state that the policy of the legislature has changed very little from 1850. The purpose of recording remains the same—the collection of instruments which may be inspected by purchasers for the purpose of determining the state of the title they are receiving. The courts have been liberal in allowing instruments to be recorded that are not expressly mentioned in the code, so that protection will be accorded to both purchasers and owners of interests in real property.

FOOTNOTES to CHAPTER 1: INTRODUCTORY MATERIAL - OPERATIVE EFFECT AND LEGIS-  
LATIVE HISTORY CALIFORNIA RECORDING ACT

1. Rice, L. J., "Land Titles in California," Real Estate Handbook of California, (1929) p. 338 et seq.  
Ogden, Melvin B., "Escrow and Land Title Law in California," (1938) Chapter 14.
2. "State of California Division of Real Estate Reference Book and Guide," Third Revision Published by Division of Real Estate, Clarence Urban, Commissioner, Sacramento, California.
3. Ogden, M. B., op. cit., Chapter 14.  
Real Estate Reference Book and Guide, op. cit.
4. Act of March 3, 1851, c. 41, 9 Stat. 631.
5. Hogan v United States, 72 Fed (2) 799; petition for writ of certiorari denied by United States Supreme Court, 295 US 752, 9 L. Ed 1696.
6. Rice, L. J., op. cit., p. 338 et seq.
7. Cal. Stats. 1850, c. 101, p. 249, An Act concerning Conveyances, passed April 16, 1850.
8. Tiffany on Real Property, Third Edition, Section 1257 (1939) Aigler, "The Operation of the Recording Acts," 22 Michigan Law Review 405 (1924).
9. Tiffany, op. cit., Section 1260.
10. Tiffany, op. cit., Sections 1258 and 1261.
11. Aigler, op. cit., p. 405 et seq.
12. St. 7 Anne, c. 20, 1708.
13. Aigler, op. cit., p. 405 et seq. Burby on Real Property (1943) p. 444.
14. Ibid, Aigler.
15. Ibid, Aigler.
16. Cady v. Purser, 131 Cal 552 (1901).
17. Patton on Titles (1938) Section 10, p. 44.
18. Gage, D. D., "Land Title Assuring Agencies", (1937) p. 34 et seq.  
See footnote in Gage's book on page 36 for discussion of the authority on the California defects.



19. Title III, Chapter 6 of the Government Code contains this information. Prior to this revision of the code much of the material was found in the Civil and Political Codes.
  20. Civil Code Section 1169.
  21. Government Code Section 27323.
  22. Government Code Section 27320.
  23. Government Code Section 27321.
  24. Government Code Section 27257.
  25. This result is arrived at by construing Civil Code Sections 1170 and 1213 together. See Cady v Purser, footnote #16 supra.
  26. Mahoney v Middleton, 41 Cal 41(1919).
  27. Home, W. S., "Escrow and Land-Title Procedure" (1948), p. 219 et seq.
  28. Gage, D. D., op cit., p. 34 et seq. Haymond, T. W., "Title Insurance Risks of Which the Public Records Give No Notice," Southern California Law Review, 1, (1928) p. 422.
  29. Tiffany, op. cit., Section 1263.
  30. "An Act for the Certification of Land Titles and for the Simplification of the Transfer of Real Estate," Cal. Stats. 1897, p. 138. This statute was replaced by the "Land Title Laws," an initiative act, which became effective in December, 1915. Cal. Stats. 1915, p. 1932.
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1. Cal. Stats. 1850, c. 101, p. 249.
  2. Amend. Stats. 1855, c. 140, p. 171.
  3. Mesick v Sunderland, 6 Cal 298.
  4. Amend. Stats. 1860, c. 366, p. 357.
  5. Added by Code Amends. 1873-74, p. 228; Amend. Stats. 1897, p. 64; Stats. 1901, p. 398 (unconstitutional); Stats. 1903, p. 108; Stats. 1909, p. 45; Stats 1913, p. 75; Stats. 1915, p. 1211; Stats. 1919, p. 244; Stats. 1921, p. 94; Stats. 1927, p. 828.
  6. Amend. Stats. 1863-4, c. 85, p. 85.
  7. Amend. Stats. 1865-6, c. 620, p. 848.
  8. "Index to the Laws of California, 1850-1920, prepared by Legislative Counsel (1921) Sacramento, p. 78.

The California Civil Code was approved March 21, 1872 and went into effect January 1, 1872.

9. Dennis v Burritt, 6 Cal 670. See discussion of this problem in the annotated draft of the Civil Code prepared by Haymond and Burch, First Edition, Sacramento, State 1872, p. 333.
10. Amend. Stats. 1897, c. 68, p. 59; Amend. Stats. 1919, c. 179, p. 278.
11. Added by Stats. 1905, p. 604; Amend. Stats. 1913, p. 335.
12. 12 Cal 373. Annotation p. 334 of 1872 Draft of Civil Code by Haymond and Burch.
13. Amend. Stats. 1895, p. 50.
14. Civil Code prepared by Haymond and Burch, p. 334 et seq. See footnote #9 supra. Also see early cases discussing the problem: Pixley v Huggins, 15 Cal 127; Chamberlain v Bell, 7 Cal 292; Rose v Munie, 4 Cal 173; Dennis v Burritt, 6 Cal 670.
15. Cal. Stats. 1947, c. 424, p. 1039.
16. Cal. Stats. 1850, c. 58, p. 151.
17. Cal. Stats. 1860, p. 311; Cal. Stats. 1860, p. 88.
18. Call v Hastings, 3 Cal 179, held conveyances include mortgages. For information as to the various sections of the New York Civil Code which the California Code Commissioners used for models see Revised Laws of the State of California, Civil Code, Sacramento 1871, prepared by Lindley, Burch & Haymond, Commissioners.
19. See Civil Code Section 1171 and Government Code Section 27322.
20. Cal. Stats. 1850, c. 58, p. 151.
21. Added by Cal. Stats. 1947, c. 424, sec. 1.
22. Government Code Sections 27330 and 27331. Added by Cal. Stats. 1947, c. 424, sec. 1.